

111TH CONGRESS
1ST SESSION

H. R. 2196

To amend title 17, United States Code, to extend protection to fashion design, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2009

Mr. DELAHUNT (for himself, Mr. GOODLATTE, Mr. NADLER of New York, Mr. ISSA, Ms. JACKSON-LEE of Texas, Mrs. BONO MACK, Mr. SENSENBRENNER, Ms. WASSERMAN SCHULTZ, Mr. COBLE, Mr. MAFFEI, Mr. WEINER, Mr. RANGEL, Mr. WEXLER, Ms. WATERS, Mr. COHEN, Mrs. MALONEY, Mr. GEORGE MILLER of California, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to extend protection to fashion design, and for other purposes.

1 Be it enacted by the Senate and House of Represent
2 tives of the United States of America in Congress assem

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the ``Design Piracy Prohib
5 tion Act``.

6 SEC. 2. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

7 (a) DESIGNS PROTECTED.—Section 1301 of title 17,
8 United States Code, is amended—

1 (1) in subsection (a), by adding at the end the
2 following:

3 ``(3) FASHION DESIGN.—A fashion design is
4 subject to protection under this chapter.''; and

5 (2) in subsection (b)—

6 (A) in paragraph (2), by inserting ``', or an
7 article of apparel,' after ``plug or mold''; and

8 (B) by adding at the end the following:

9 ``(7) A 'fashion design'—

10 ``(A) is the appearance as a whole of an
11 article of apparel, including its ornamentation
12 and

13 ``(B) includes original elements of the arti
14 cle of apparel or the original arrangement or
15 placement of original or non-original elements
16 as incorporated in the overall appearance of th
17 article of apparel.

18 ``(8) The term 'design' includes fashion design
19 except to the extent expressly limited to the des
20 of a vessel.

21 ``(9) The term 'apparel' means—

22 ``(A) an article of men's, women's, or chil
23 dren's clothing, including undergarments, outer-
24 wear, gloves, footwear, and headgear;

1 ``(B) handbags, purses, wallets, duffel
2 bags, suitcases, tote bags, and belts; and

3 ``(C) eyeglass frames.

4 ``(10) In the case of a fashion design, the term
5 'trend' means a newly popular concept, idea, or princi-
6 ple expressed in, or as part of, a wide variety of
7 designs of articles of apparel that create an immen-
8 diate amplified demand for articles of apparel em-
9 bodying that concept, idea, or principle.''.
10 (b) DESIGNS NOT SUBJECT TO PROTECTION.—Sec-

11 tion 1302(5) of title 17, United States Code, is ame-
12 nded—

13 (1) by striking ``(5)'' and inserting ``(5)(A)
14 the case of a design of a vessel hull,'';

15 (2) by striking the period and inserting ``; or
16 and

17 (3) by adding at the end the following:

18 ``(B) in the case of a fashion design, embodied
19 in a useful article that was made public by the de-
20 signer or owner in the United States or a foreign
21 country more than 6 months before the date of the
22 application for registration under this chapter.''.
23 (c) REVISIONS, ADAPTATIONS, AND REARRANGE-

24 MENTS.—Section 1303 of title 17, United States Code, is
25 amended by adding at the end the following: ``The pre-

1 ence or absence of a particular color or colors or of
 2 torial or graphic work imprinted on fabric shall not be
 3 sidered in determining the originality of a fashion de
 4 under section 1301 or 1302 or this section or the si
 5 larity or absence of similarity of fashion designs in
 6 mining infringement under section 1309.''.
 7

8 (d) TERM OF PROTECTION.—Section 1305(a) of title
 9 17, United States Code, is amended to read as follow

10 ''(a) IN GENERAL.—Subject to subsection (b), the
 11 protection provided under this chapter—

12 ''(1) for a design of a vessel hull, shall cont
 13 for a term of 10 years beginning on the date of t
 14 commencement of protection under section 1304;
 15 and

16 ''(2) for a fashion design, shall continue for
 17 term of 3 years beginning on the date of the com
 18 mencement of protection under section 1304.''.
 19

20 (e) INFRINGEMENT.—Section 1309 of title 17,
 21 United States Code, is amended—

22 (1) in subsection (c), by striking ''that a des
 23 was protected'' and inserting ''or reasonable groun
 24 to know that protection for the design is claimed

25 (2) by amending subsection (e) to read as fol-
 26 lows:

27 ''(e) INFRINGING ARTICLE DEFINED.—

1 ``(1) IN GENERAL.—As used in this section, an
2 ‘infringing article’ is any article the design of
3 has been copied from a design protected under this
4 chapter, or from an image thereof, without the con
5 sent of the owner of the protected design. An in
6 fringing article is not an illustration or picture
7 protected design in an advertisement, book, peri
8 odical, newspaper, photograph, broadcast, motion
9 picture, or similar medium.

10 ``(2) VESSEL HULL DESIGN.—In the case of a
11 design of a vessel hull, a design shall not be dee
12 to have been copied from a protected design if it
13 original and not substantially similar in appearan
14 to a protected design.

15 ``(3) FASHION DESIGN.—In the case of a fash-
16 ion design, a design shall not be deemed to have
17 been copied from a protected design if it is origi
18 and not closely and substantially similar in over
19 visual appearance to a protected design, if it mer
20 reflects a trend, or if it is the result of indepe
21 creation. This paragraph shall not be construed t
22 permit the copying of a discrete design protected
23 this chapter.’’; and

24 (3) by adding at the end the following:

1 ``(h) SECONDARY LIABILITY.—The doctrines of sec-
 2 ondary infringement or secondary liability that are app
 3 in actions under chapter 5 of this title apply to the
 4 extent to actions under this chapter. Any person who
 5 liable under either such doctrine under this chapter is
 6 ject to all the remedies provided under this chapter,
 7 cluding those attributable to any underlying or resul
 8 infringement.''.
 9

10 (f) APPLICATION FOR REGISTRATION.—Section 1310
 11 of title 17, United States Code, is amended—

12 (1) by amending subsection (a) to read as fol-
 13 lows:

14 ``(a) TIME LIMIT FOR APPLICATION FOR REGISTRA-
 15 TION.—

16 ``(1) VESSEL HULL DESIGN.—In the case of a
 17 design of a vessel hull, protection under this chap
 18 shall be lost if application for registration of t
 19 sign is not made within 2 years after the date o
 20 which the design is first made public.

21 ``(2) FASHION DESIGN.—In the case of a fash-
 22 ion design, protection under this chapter shall
 23 lost if application for registration of the desig
 24 not made within 6 months after the date on which
 25 the design is first made public by the designer
 owner in the United States or a foreign country.'

1 (2) in subsection (b), by striking ``offered
2 sale'' and inserting ``offered for individual or p
3 sale''; and

4 (3) in subsection (d)–

5 (A) by redesignating paragraphs (1)
6 through (6) as subparagraphs (A) through (F),
7 respectively, and moving such subparagraphs 2
8 ems to the right;

9 (B) by striking ``The application for reg-
10 istration shall be made to the Administrator
11 and shall state'' and inserting the following

12 ``(1) IN GENERAL.–The application for reg-
13 istration shall be made to the Administrator and
14 shall state''; and

15 (C) by adding at the end the following:

16 ``(2) VESSEL HULL DESIGNS.–In the case of a
17 design of a vessel hull, the application for regi
18 tion may include a description setting forth the
19 lient features of the design, but the absence of s
20 a description shall not prevent registration unde
21 this chapter.

22 ``(3) FASHION DESIGNS.–In the case of a fash-
23 ion design, the Administrator shall require a bri
24 description of the design for purposes of matchin
25 the search criteria of the searchable database est

1 lished under section 1333, except that such brief c
 2 scriptions shall in no way limit the protection gr
 3 ed to the design or the subject matter of the re
 4 istration under this chapter.''.

5 (g) RECOVERY FOR INFRINGEMENT.—Section 1323
 6 of title 17, United States Code, is amended by strik
 7 ``\$50,000 or \$1 per copy'' and inserting ``250,000 or
 8 per copy''.

9 (h) PENALTY FOR FALSE REPRESENTATION.—Sec-
 10 tion 1327 of title 17, United States Code, is amended

11 (1) by striking ``\$500'' and inserting ``5,000
 12 and

13 (2) by striking ``\$1,000'' and inserting
 14 ``\$10,000''.

15 (i) COMMON LAW AND OTHER RIGHTS UNAF-
 16 FECTED.—Section 1330 of title 17, United States Code,
 17 is amended—

18 (1) in paragraph (1), by striking ``or'' after
 19 semicolon;

20 (2) in paragraph (2), by striking the period and
 21 inserting ``; or''; and

22 (3) by adding at the end the following:

23 `` (3) any rights that may exist under provision
 24 of this title other than this chapter.''.

1 (j) SEARCHABLE DATABASE FOR FASHION DE-
 2 SIGN.—

3 (1) IN GENERAL.—Chapter 13 of title 17,
 4 United States Code, is amended by adding at the
 5 end the following:

6 **“§ 1333. Searchable database for fashion design**

7 “(a) IN GENERAL.—The Administrator shall estab-
 8 lish and maintain a computerized database of fashion d-
 9 signs protected under this chapter. The database—

10 “(1) shall be searchable electronically, by g-
 11 eral apparel and accessory categories;

12 “(2) shall include the information required b-
 13 subparagraphs (A), (B), (C), (D), and (F) of para-
 14 graph (1), and paragraph (3), or section 1310(d);
 15 and

16 “(3) shall be available to the public without
 17 fee or other access charge.

18 “(b) ADDITIONAL REQUIREMENTS.—The database
 19 under subsection (a) shall contain a substantially comp-
 20 visual representation of all fashion designs that have
 21 submitted for registration under this chapter, and sh-
 22 include information as to the status of those designs,
 23 as whether such designs are—

24 “(1) registered under section 1313(a);

25 “(2) denied registration under section 1313 (b)

1 ``(3) cancelled under section 1313(c); or
2 ``(4) expired under section 1305.''.
3

4 (2) CONFORMING AMENDMENT.—The table of
5 sections for chapter 13 of title 17, United States
6 Code, is amended by adding at the end the fol-
7 lowing:

8 ``1333. Searchable database for fashion design.''.
9

10 (3) AUTHORIZATION OF APPROPRIATIONS.—

11 There are authorized to be appropriated such sums
12 as may be necessary to carry out the amendments
13 made by this subsection.

14 **SEC. 3. EFFECTIVE DATE.**

15 This Act and the amendments made by this Act shall
16 take effect on the date of the enactment of this Act.

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